FOR ARGUMENT.

IN THE
Supreme Court of the United States
OCTOBER TERM, 1978

No. 77-874

GENANETT ALEXANDER, *et al., Petitioners,*

v.

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT *et al., Respondents.*

No. 77-1463

PATRICIA ROBERTS HARRIS, SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *et al., Petitioners,*

v.

SADIE E. COLE *et al., Respondents.*

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE SEVENTH CIRCUIT AND THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF FOR PETITIONERS GENANETT ALEXANDER *et al.*, AND RESPONDENTS SADIE E. COLE *et al.*

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This reply brief is being filed for the petitioners in No. 77-874 and the respondents in No. 77-1463, who are referred to collectively, for convenience, as the "tenants."

All parties agree that Relocation Act benefits and services can be triggered under either the "written order" clause or the "acquisition" clause of the definition of "displaced person," that in either case there must be an acquisition (or a proposed but unconsummated acquisition) of property, and that in either case there must be a Federal (or Federally assisted) "program or project."

The principal remaining issue between the tenants, on the one hand, and the Government on the other is the scope of the "written order" clause.[1] The Government contends that it covers only two cases: (a) persons who move from their homes after receiving "written notice" that an agency intends to acquire the property, even if the acquisition does not take place; and (b) persons who are ordered to move after the acquisition takes place but only if the order to move is connected with the "program or project" that led to the acquisition.[2]

We have two answers. First, we contend that the tenants who were evicted from Riverhouse and Sky Tower fit within the second of these cases, *i.e.*, that the HUD property disposition program that led to their displacement is connected with HUD's acquisition of these two housing projects. Second, however, we do not agree that there must be such a connection; we think the plain meaning and purpose of the "written order" clause show that it is triggered when there is an acquisition and then an order to move that results from a Federal "program or project" not connected with the acquisition.

[1] "The term 'displaced person' means any person who . . . moves from real property . . . as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; . . . " 42 U.S.C. § 4601(6).

[2] After some earlier suggestions that the "written order" clause covers only pre-acquisition orders to vacate, the Government concedes that a post-acquisition order to vacate can fall within the clause in some circumstances. (Gov't Br. 52 and n.25)

A. HUD DISPLACED THESE TENANTS FOR A FEDERAL "PROGRAM OR PROJECT" CONNECTED WITH THE ACQUISITIONS.

The HUD decisions to evict the Riverhouse and Sky Tower tenants were related to HUD's acquisition of those properties. In each case HUD acted pursuant to a plan that is anchored in its own rules and guidelines controlling the disposition of multifamily projects acquired by HUD upon a mortgage default. *See* 24 C.F.R. Part 290, "Disposition of HUD-Owned Multifamily Projects"; PROPERTY DISPOSITION-HANDBOOK – MULTIFAMILY PROPERTIES, RHM 4315.1.[3]

These rules and guidelines expressly provide that HUD should conduct an elaborate financial and programmatic analysis of the housing being acquired and, on the basis of that analysis, should determine whether (1) to sell the property, with or without HUD rental subsidies, 24 C.F.R. § 290.20, (2) to sell to a cooperative or to sell the units individually (perhaps converting the property to a condominium), with or without HUD financing or subsidies, *id.* § 290.30(b), or (3) to demolish the project, *id.* § 290.30(d). When feasible, this analysis should be started before HUD decides to foreclose on the defaulted mortgage. *Handbook, e.g.*, paras. 21, 27, 36.

In the case of Riverhouse, the project involved in *Alexander*, Hud took an assignment of the defaulted mortgage in December 1970. In May 1973, HUD decided to initiate foreclosure proceedings. A court-appointed receiver operated the project until August 1974, when HUD bought the property at the foreclosure sale. At about that time, the

[3] The *Property Disposition Handbook* was adopted in February 1971, the month after the effective date of the Relocation Act. The regulations in 24 C.F.R. were adopted in January 1977 and are "basically a codification of the rules contained in" the *Handbook*. 42 Fed. Reg. 5049, 5050 (Jan. 27, 1977).

city fire department and the chief elevator inspector reported a variety of unsafe conditions and recommended numerous corrections. HUD, upon making the analysis referred to in the preceding paragraph, decided that, as between rehabilitating the project and selling it, the financially more advantageous alternative was to close (but not demolish) Riverhouse and sell the property, although it determined to hold off submitting its final disposition program until this litigation was resolved. In November 1974, HUD caused "written orders" of eviction to be sent to the tenants, and it has now sold the property to a private developer.

In the case of Sky Tower, the project involved in *Cole*, the pattern is similar although the details are different. In that case, HUD "insisted on foreclosure" in June 1973. 389 F. Supp. at 101. HUD thereafter operated Sky Tower for over a year while it considered the costs of the various alternatives open to it. Finally it decided, as in the case of Riverhouse, that the cost of further rehabilitation was greater than what the property could support financially, and it decided to demolish the buildings and sell the land for private development in accordance with a District of Columbia "master plan" to eliminate blight.

In short, in both cases HUD made a considered choice among several alternatives. In both cases, the costs of the alternatives — but not including the costs of complying with the Relocation Act — were central to that decision. In both cases, the decision to sell the project was pursuant to the HUD property disposition program for properties acquired after mortgage default. Thus, in both cases, the decision to evict the tenants and sell the project was the direct result of the acquisition of the mortgaged property.

This means that under the Government's own analysis these tenants qualify as "displaced persons" under the Relocation Act.

B. TENANTS WHO ARE DISPLACED FOR A FEDERAL "PROGRAM OR PROJECT" NOT CONNECTED WITH THE ACQUISITION ARE "DISPLACED PERSONS."

Although we have shown that the Federal "program or project" that caused the tenants to be displaced was the same program that resulted in acquisition, we do not agree that such a connection is part of the definition of "displaced person." In our view, the structure of the definition is a parallel structure: One is displaced if one moves *either*

— (a) as the result of an acquisition that is for a Federal program or project,

or

— *(b)* as the result of a written order to move, issued by the acquiring agency, that is for a Federal program or project.

Thus, under the plain meaning of the words, if an agency has acquired property and then issues written orders to move for a program or project, persons displaced by the written orders fall within the definition.

The Government argues instead that the written order clause is not parallel but appositive to the acquisition clause. (Gov't Br. 55) We think this is simply incorrect grammar. "Apposition" is defined as "a grammatical construction in which two usually adjacent nouns having the same referent stand in the same syntactical relation to the rest of the sentence (as *the poet* and *Burns* in 'a biography of the poet Burns')." WEBSTER'S NEW COLLEGIATE DICTIONARY. Thus, appositive clauses are not generally introduced by the word "or."[4] But of equal import is Congress' special

[4]The fact that the definition of "displaced person" contains the word "or" several other times in its ordinary, disjunctive sense shows that the same disjunctive meaning was intended for the "or" in question. Dumont v. United States, 98, U.S. 142l, 143(1878).

buttressing of the "written order" clause to avoid confusion. Congress not only used commas to signal a clear separation from the "acquisition" clause, but it also repeated the words "as the result of the" to emphasize that "written orders" function independently from "acquisitions." This careful syntax shows that Congress meant the "acquisition" clause and the "written order" clause to have independent and equal relationships to the core clause of the sentence, "any person who moves . . . for a program or project."

The Government also argues that the word "acquiring" in the "written order" clause means "is engaged in an acquisition," *i.e.*, that only written orders issued while an acquisition is in progress are within the statutory definition. This approach, however, would totally bar orders issued after acquisition has taken place, and the Government concedes that in some circumstances post-acquisition orders are covered. (Gov't Br. 52 n.25) Indeed, in their reply to the opposition to certiorari in *Cole*, the Government expressly denied arguing that there cannot be a "time lag" between acquisition and displacement. (Gov't Reply Mem., No. 77-1463, p. 4) *Cf.* H.R. Rep. No. 1656, 91st Cong., 2d Sess. 8 (1970) (noting the possibility of an "unusually long time lag between the public announcement of a project and the displacement"). Moreover, the so-called Murray Hill provision, Section 219 (uncodified), and its legislative history make clear that a lengthy delay between acquisition and displacement is no bar to eligibility for Relocation Act assistance.[5]

[5]In hearings on the proposed Relocation Act, New York Congressman (now Mayor) Koch drew attention to families and businesses that were to be displaced by the Government's acquisition, many years earlier, of land in the Murray Hill section of New York City. *See, e.g., Uniform Relocation Assistance and Land Policies Act of 1969: Hearings before the Subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations*, 91st Cong., 1st Sess. 164-69 (1969). Because the displacements were expected to occur before the Act's effective date (which was then to be 90 days following enactment), Section 219 was added deeming these families and businesses "displaced persons" if they were displaced after January 1, 1969, and before the 90th day following the date of enactment. 84 Stat. 1903. No special language was included to cover the time lag between acquisition and displacement, for the simple reason that none was needed.

To test the argument that the dispositions must be connected with the acquisitions, it is necessary only to pose the following case: Suppose the Government acquires land for one purpose, holds the land for a time, and then adopts an entirely different purpose and evicts the tenants (or homeowners or businessmen or farmers); are the rights of these displaced persons to be defeated because of the Government's change of plan? Certainly not. These persons are as much the victims of a displacement decision that is made for the benefit of the public as a whole as they would have been if the Government had carried out its original plan.[6]

[6]The HUD regulations do not provide that the program or project that causes displacement must be the program or project that led to acquisition. Instead, displacement is covered if, *inter alia*, it

> "is a result of:
>
> * * *
>
> (2) the written order of the acquiring agency to vacate such property for *a* project;****." 24 C.F.R. § 42.55(e) (emphasis added).

As we showed in our opening briefs, the dominant theme to emerge from the extensive hearings on the Relocation Act was that persons evicted from their homes by virtue of Government action (often land acquisition) should be adequately and uniformly compensated for their losses. Congress was concerned that the victims of displacement were being treated differently under similar circumstances and that, generally, the assistance provided was insufficient to meet hardships imposed. Moreover, Congress was impressed by the fact that displacements of thousands of people were occurring without any assurance that alternative, affordable housing was being provided by the private housing market. Thus, it was the hardships caused by displacement rather than the precise means by which people were displaced which formed the essential concern of Congress. This central concern became the theme of the Act, as expressed by the "Declaration of Policy":

> "The purpose of this subchapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole." Section 201, 42 U.S.C. § 4621.[7]

[7]The Government acknowledges that the "Declaration of Policy" does not contain a qualification that was contained in the 1969 bill and that would more easily have supported HUD's restrictive view. The 1969 version established a policy protecting persons "displaced by the acquisition of real property." S. 1, Section 201, 115 Cong. Rec. 31372 (1969). The Act as finally passed broadened the policy statement and eliminated the reference to acquisitions. The Government tries to avoid the impact of this change by noting language in the 1970 House Committee Report that the bill "provides for relief of the economic dislocation which occurs in the acquisition of real property for Federal or federally assisted programs." H.R. Rep. No. 1656, *supra*, at p.3. But this statement cannot limit the coverage of the Act. At most, it is an expression of particular concern for one aspect of the Government's forced displacement problem, "but does not establish that Congress in fact legislated with reference to [it] exclusively." Commissioner v. Korell, 339 U.S.619,626(1950).

> "The plain words and meaning of a statute cannot be overcome by a legislative history which, through strained processes of deduction from events of wholly ambiguous significance, may furnish dubious bases for inference in every direction." Gemsco, Inc. v. Walling, 324 U.S. 244, 260 (1945).

And in the case of persons displaced from their homes, Congress made it especially clear that displacements should never occur for a program or project unless adequate, affordable replacement housing was available. Section 206(b), 42 U.S.C. § 4626(b). Neither in Section 201 nor in Section 206(b) did Congress condition its concern on the existence of an acquisition, let alone provide that only displacements caused by programs or projects that lead to acquisitions are intended to be covered.

The Government does not contend that its narrow interpretation of the "written order" clause is compelled by the statutory language. It does contend that our "equally plausible" interpretation (Gov't Br. 22) is incorrect because, citing the principle of statutory construction outlined in *United States* v. *American Trucking Ass'n*, 310 U.S. 534, 543 (1940), our interpretation (1) would lead to "absurd or futile" results and (2) would be "plainly at variance with" the structure and purpose of the Act.

In our view, the Government has utterly failed to sustain either of these exceptions to the plain meaning rule.

(1) The "Absurd" and "Futile" Hypothetical Cases The Government Constructs Are Not Covered By Our Interpretation.

The Government constructs four hypothetical cases involving displacements from Federally owned or insured housing which it claims would produce Relocation Act benefits under our interpretation of the written order clause, in an effort to show that our interpretation would produce "absurd" or "futile" results (Gov't Br. 23-24). In truth, not one of these cases is covered by our interpretation.[8]

The first three cases relate to persons ordered to move because of their own failure: to abide by project rules, to pay rent, or to make mortgage payments. We cannot understand how any sensible interpretation of the Relocation Act could provide benefits to such persons. These are not the innocent victims of Government programs; they are instead displaced because they have broken contracts. Congress plainly did not intend them to be covered, and it made that clear by covering only displacements that are "for a program or project." Those words simply mean that the agency in question must make some programmatic decision with regard to the property that requires

[8]Noting that the Relocation Act also applies to State projects undertaken with Federal financial assistance, the Government also suggests that our interpretation would make the Act applicable to a State university's use of Federal funds to convert a dormitory or faculty housing to another use. (Govt' Br. 24 & n.8) We do not see that result as "absurd" or "futile," although we think it likely that the university would see that the students or faculty would have suitable, affordable replacement housing before taking such a step. Moreover, students in college dormitories are simply not "tenants" in "dwellings" for purposes of the Relocation Act.

displacing tenants or homeowners or businesses or farmers — whether it be the construction of a hospital or highway or the rehabilitation or sale of a housing project. Those are "programs or projects." Evicting a tenant for nonpayment of rent is not.

The fourth hypothetical case the Government constructs is of a different kind but is also not covered. This concerns the Army closing a base and thus ordering occupants of on-base housing to move (or terminating on-base housing to make room for another activity). We think the relationship between military personnel and their housing is entirely different from the ordinary situation, for the Army is both landlord and employer. On-base housing is usually provided without charge, and the military normally pays all moving expenses when it transfers its personnel from one location to another. Moreover, we strongly doubt that the Army would terminate on-base housing without first determining that those who are evicted have other housing available. Finally, military personnel fully expect that they will be transferred from place to place for a variety of reasons and thus cannot think of a particular base — let alone a particular barracks — as "home" in the ordinary sense.

In short, we think the Government's efforts to show that our interpretation of the "written order" clause can lead to "absurd" or "futile" results is so lacking in merit as to provide strong support for our position.

(2) Neither the Structure Nor The Purpose Of The Statute Suggests That Congress Intended To Exclude Tenants Who Are Displaced From Subsidized Housing That Is Acquired By The Government.

The Government makes much of the fact that the "substantive" sections of the Relocation Act use language which suggests that an *acquisition* must result in displacement before the particular service or benefit is triggered. From

this the Government contends that if the displacement occurs because of a program or project unconnected with the acquisition, then the acquisition did not result in the displacement and, *ergo*, the Relocation Act service or benefit is not available.

Once again the Government fails to keep faith with Congress' purpose — to alleviate the burdens on persons displaced by Federal programs, Section 201, 42 U.S.C. § 4621 — and treats the words of the statute as hurdles that must be jumped.

HUD's view that Relocation Act services are available only to those who move as a result of acquisition of real property is, moreover, inconsistent with its own interpretation of the "written order" clause. Thus, Section 202, 42 U.S.C. § 4622, provides that moving and related expenses are payable when "the acquisition of real property ...will result in the displacement of any person...." Section 205, 42 U.S.C.§4625, contains similar language with respect to relocation assistance advisory services. There is not a single reference in these sections to "proposed but unconsummated acquisitions." Yet HUD asserts that persons who are displaced by a "written notice" of intent to acquire are covered by the "written order" clause, and hence are covered by Sections 202 and 205, *even if no acquisition takes place.*[9]

We agree with this interpretation of the "written order" clause. The legislative history, cited in the Government's

[9] "By virtue of the written order clause, there is no need to wait for the acquisition actually to take place before the benefits become available under these sections, and their availability does not depend on whether the acquisition does ultimately take place." (Gov't Br. 30)

brief (pp. 42-44), makes perfectly clear Congress' intention to cover such cases, even though not a word in the Act includes them. Congress intended the word "acquisition" in Sections 202 and 205 to be read not literally but as a shorthand for the entire concept embraced by the definition of "displaced person," and even to include a case where there is no acquisition at all. (See the decision below in *Cole*, 571 F.2d at 597, n.32; p. 15A, n.32) In other words, on the Government's view, this pivotal definition was intended to broaden the coverage of the Act well beyond what the bare words of Sections 202 and 205 provide. That is our view as well.

The Government also contends that its view of the Act's coverage is buttressed by language in Section 204, 42 U.S.C. § 4624, which authorizes replacement housing payments only for tenants who occupied their homes for at least 90 days before "the initiation of negotiations for acquisition" of the dwelling. The Government observes that where, as in the case of Sky Tower, over 15 months elapsed between acquisition and displacement, tenants who moved into their apartments 18 or more months before being displaced would not be covered. This result the Government calls an "anomaly."

Of course any cutoff date fixed by statute creates a risk of "anomalous" results, if one compares situations immediately on either side of the cutoff. Thus, claiming that our interpretation produces an "anomaly" here says very little.

In any event, the result the Government suggests is by no means the most logical interpretation of the 90-day provision in Section 204.

For example, Section 217 of the Act, 42 U.S.C. § 4637, makes the act applicable in many situations in which no Government agency, State or Federal, contemplates any

acquisition at all but in which Government funds are used for a public purpose. These situations involve, for example, demolition of privately owned housing on the ground that it is structurally unsound or unfit for human habitation.[10] 24 C.F.R. § 42.55 (f), (h). In such cases, HUD regulations define "initiation of negotiations" for purposes of Section 204 to mean the date the person "vacates the dwelling." 24 C.F.R. § 42.95(b)(5)(i). In this definition, HUD is recognizing that the purpose of the 90-day provision — preventing persons from moving into a dwelling solely or chiefly to make themselves eligible for Relocation Act payments — is well served by having the 90 days date back from when the person moves out of the dwelling.

Similarly, the Senate Report, commenting on the analogous provision applicable to homeowners (Section 203, 42 U.S.C. § 4623), notes that despite the statutory requirement that the person occupy the dwelling for, in this case, 180 days "prior to the initiation of negotiations for the acquisition of the property," the person should be deemed eligible if he occupied the property after the project began

[10]The Government uses Section 217 as an argument against our interpretation of the "written order" clause. It says that if we were correct about the clause, Section 217 would not be needed. (Gov't Br. 31-32, 35-36) (The dissenting judge in *Cole* took the same position. See 571 F.2d at 611-12; pp. 46A-47A.) In fact, however, the principal purpose of Section 217 was to bring within the definition of "acquisition" the cases cited in the text, *which do not involve acquisitions by anyone*. We do not contend that the written order clause would apply in such cases (in the absence of Section 217).

In this connection, we agree with the Government (Br. 22 n. 6) that this case does not involve the question whether programs undertaken by private projects involving Federal financial assistance are covered by the Relocation Act, and thus there would seem to be no need for the Court to concern itself with that issue, which involves wholly different questions of statutory interpretation.

and for 180 days before moving. S. Rep. No. 488, 91st Cong., 1st Sess. 11 (1969).[11]

The point here is that if, as we contend, the Riverhouse and Sky Tower tenants are covered by the Act, HUD can arrive at a sensible means of dealing with the cutoff-date point, and the 90-day requirement accordingly poses no obstacle to the result for which we contend.

C. THE TENANTS' SUGGESTED INTREPRETATION SHOULD NOT BE REJECTED MERELY BECAUSE IT COULD BE EVADED BY HUD.

As a final point, the Government suggests that HUD could evade the impact of any decision adopting the tenants' suggested interpretation by creating a "vacant delivery"-rule. (Gov't Br. 62)[12] Such a rule presumably would state that the holders of HUD-insured mortgages on multi-family housing projects — including FNMA, banks, etc. — could make claims on their insurance policies only if they first evicted all the tenants. The rule presumably would have to apply in all cases, including those where HUD would be likely to continue the project as subsidized housing for low-income families, because the ultimate disposition to be made would not always be known at the time of mortgage default.

We do not think the Court should shrink from adopting our suggested interpretation of the written order clause merely because HUD could evade the impact of such a decision by this Court. We are aware of no authority for such a rule of statutory construction, and the Government cites none.

[11]The Senate Report refers to a 1-year period, as did the bill at that time.

[12]*See also* the petition for certiorari in *Cole*, p. 17.

Moreover, we think it unlikely, despite this suggestion in the Government's brief, that HUD would adopt such an evasive tactic. *First*, the brief elsewhere states that the Secretary is attempting to lessen the burdens on tenants of HUD-owned housing who are displaced by HUD programs, even when the Relocation Act does not apply. *Second*, in the one case we know of where a vacant delivery requirement has been adopted — defaults in the Section 203 mortgage insurance program, 24 C.F.R. § 203.381 (the program involved in *Caramico*) — HUD has rescinded the requirement. 41 Fed. Reg. 43094 (Sept. 29, 1976). *Third*, we believe it would not be consistent with the goals of the national housing laws to adopt a rule that would cause wholesale eviction of tenants from HUD-subsidized housing projects for no reason other than to evade a decision making the Relocation Act applicable. *Finally*, we think the Congress has made it crystal clear that it expects executive branch officials to adopt an entirely different approach. Thus, in the principal House Report on the Relocation Act, the Committee on Public Works said this:

> "The Committee believes that this bill as reported provides for relief of the economic dislocation which occurs in the acquisition of real property for Federal and federally assisted programs. The tools in the reported bill are adequate to deal with the problem. *The Congress, however, can only provide such tools. Their effective use depends upon the attitudes and skill of the officials in the executive branch of the Government responsible for their administration. The principal of adequate housing, for example, will require not only the use of the more liberal financial allowances authorized by the reported bill, but also imagination, ingenuity and a desire on the part of its administrators to translate this authorization into equitable and satisfactory conditions for the people affected.*" H.R. Rep. No. 1656, *supra*, at p. 3 (emphasis added).

Elsewhere in the same Report, the Committee cites the need for "faithful execution" of the Act by agency heads (as a substitute for judicial review of administrative payment decisions), *id*. at p. 5, and the need for "positive support by all concerned with the implementation of the bill" in providing for relocation advisory assistance, one of the "key elements of any successful relocation effort," *id*. at p. 13. Earlier this year, moreover, the Congress emphasized that HUD should take special care to minimize displacements where HUD acquires housing projects following mortgage defaults and to provide maximum relocation assistance and relief where displacement is unavoidable. Housing and Community Development Amendments of 1978, §§ 203(a) (d), 902, Pub. L. 95-557, ____ Stat. ____ (1978).

In short, we think the suggestion that evasion of the Act may occur if the tenants prevail can be ignored by the Court.

CONCLUSION

For the reasons set forth herein and in the opening briefs for the tenants, the Court should reverse the decision below in No. 77-874 and should affirm the decision below in No. 77-1463.

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